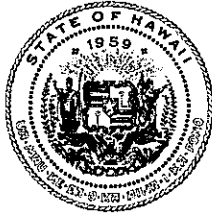


NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
TOURISM**

**Monday, March 12, 2012
9:30 A.M.**

State Capitol, Conference Room 312

**In consideration of
SENATE BILL 2632, SENATE DRAFT 1
RELATING TO FEE TIME SHARE INTERESTS**

Senate Bill 2632, Senate Draft 1 proposes to permit fee time share interests to be recorded in the regular system of the Bureau of Conveyances (Bureau) rather than the Land Court. Further, this bill removes the requirement that the certificate of title be updated prior to deregistration of the time share interests. Lastly, this bill allows the Bureau to charge a transaction fee for recording in the Bureau and the Office of the Assistant Registrar of the Land Court. While the Department of Land and Natural Resources (Department) supports the intent of this bill, the Department would however prefer to have language changed to state specific recording fees in the Bureau and the Office of the Assistant Registrar of the Land Court.

Act 120, Session Laws of Hawaii 2009, required fee time share interests to be deregistered from Land Court upon the presentation for recording of any instrument conveying or encumbering a fee time share interest. This bill would simplify deregistration by offering a date that all fee time share interests would be deemed deregistered from Land Court. This action would assist the Bureau in easing the backlog certifying Land Court documents. Further, this measure allows the Bureau to add a transaction fee for recording documents.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



The Judiciary, State of Hawai'i

Testimony to the House Committee on Tourism

The Honorable Tom Brower, Chair

The Honorable James Kunane Tokioka, Vice Chair

Monday, March 12, 2012, 9:30 a.m.
State Capitol, Conference Room 312

by
Calvin C. Ching
Acting Deputy Chief Court Administrator
First Circuit

Bill No. and Title: Senate Bill No. 2632, S.D. 1, Relating to Fee Time Share Interests

Purpose: Ease the backlog in land court recording and registration by:

- (1) Requiring all fee time share interests to be recorded in the regular system rather than the land court, as of the effective date of this Act;
- (2) Streamlining the procedure for the office of the assistant registrar to update the certificates of title for all remaining fee time share interests as part of the deregistration process; and
- (3) Allowing the bureau of conveyances to charge a transaction fee for each deed of a time share interest recorded in the bureau of conveyances pursuant to chapter 502, Hawaii Revised Statutes. This is intended to offset to decline in recording fee revenue that may result from the changes in recording procedures established by this Act.

Judiciary's Position:

The Judiciary supports the intent of Senate Bill No. 2632, S.D. 1, Relating to Fee Time Share Interests, which seeks to ease the backlog in land court recording and registration.

The Judiciary is supportive of the transfer of fee simple time share interests from the land court to the regular system. And, from an operational perspective, the Judiciary is aware and understanding of the desire to ease the backlog in land court recording and registration.



Senate Bill No. 2632, S.D. 1, Relating to Fee Time Share Interests
House Committee on Tourism
March 12, 2012
Page 2

However, the Judiciary must respectfully raise concerns regarding fee simple time share interest chain of title issues, which would occur upon this mandatory transfer from the land court to the regular system. These similar concerns also apply to treatment of an estate for years time share interest as well as any previously recorded time share fee interest documents, which are part of the backlog existing on the effective date of this act. This bill, as written, appears ambiguous with respect to clearly addressing the chain of title as well as cancellation of certificates of title of time share fee interests from the land court to the regular system, which may ultimately impact questions of title for Land Court properties.

While the Judiciary has concerns regarding the above-noted issues, and as stated previously, is supportive of the intent of this proposed legislation, work and discussion continues with the Office of the Assistant Registrar, Bureau of Conveyances as well as industry representatives with the intent to provide this Legislature with an efficient and workable solution that will benefit both the government agencies as well as the public we serve.

Thank you for the opportunity to testify on this measure.



March 12, 2012

TO: HOUSE COMMITTEE ON TOURISM
Representative Tom Brower, Chair
Representative James Kunane Tokioka, Vice Chair

FROM: Daniel Dinell
ARDA-Hawaii, Chair

RE: SB 2632, SD1 Relating to Fee Time Share Interests
Position: Support

Dear Chair Brower, Vice Chair Tokioka and members of the Committee:

ARDA-Hawaii is the local chapter of the American Resort Development Association, the national timeshare trade association, comprising of over 20 local members with 45 properties statewide. In the aggregate the timeshare industry comprises approximately 12% of the visitor units throughout the state.

ARDA Hawaii supports SB 2632, SD1 which is intended to streamline the removal of fee simple time share interests from the land court system.

In 2009, the Legislature passed Act 120 which was intended to ease the backlog in land court recordings and registrations by, among other things, transferring fee simple time share interests from the land court system to the regular system.

To accomplish this, Act 120 requires that the assistant registrar update the certificate of title for each fee time share interest and then record that certificate of title in the bureau of conveyances. However, updating and recording the certificates of title for all fee time share interests concurrently has exceeded the capacity of the land court, particularly in light of the approximately three-year backlog of land court recordings and registration.

SB 2632, SD1 is intended to eliminate this problem by removing all fee time share interests from the land court effective as of July 1, 2012. It eliminates the requirement to update or record the certificates of title prior to such removal.

SB 2632, SD1 also provides for an undetermined temporary increase in recording fees. We understand that the bureau of conveyances intends to increase the recording fees in the future. This temporary increase is intended to maintain the solvency of the bureau until the new fees can take affect.

Thank you for the opportunity to submit these comments.

"Timeshare With Aloha"

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM
GARY M. SLOVIN
MIHOKO E. ITO
CHRISTINE OGAWA KARAMATSU
ANNE T. HORIUCHI

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880
info@goodsill.com • www.goodsill.com

INTERNET:
gslovin@goodsill.com
meito@goodsill.com
ckaramatsu@goodsill.com
ahoriuchi@goodsill.com

TO: Representative Tom Brower
Chair, Committee on Tourism
Hawaii State Capitol, Room 315
Via Email: TOUTestimony@Capitol.hawaii.gov

FROM: Gary M. Slovin / Mihoko E. Ito

DATE: March 10, 2012

RE: **S.B. No. 2632, SD1 – Relating to Fee Time Share Interests**
Hearing: March 12, 2012 at 9:30 a.m.
Conference Room 312

Dear Chair Brower and Members of the Committee on Tourism:

Wyndham Vacation Ownership offers individual consumers and business-to-business customers a broad suite of hospitality products and services through its portfolio of world-renowned brands. Wyndham has a substantial presence in Hawaii through its Wyndham Vacation Resorts and WorldMark by Wyndham brands.

Wyndham **supports** S.B. 2632, SD1, Relating to Fee Time Share Interests, which would require all fee time share interests to be recorded in the regular system rather than the land court, streamlines the procedure for the office of the assistant registrar to update the certificates of title for all remaining fee time share interests as part of the deregistration process, and allows the bureau of conveyances to charge a transaction fee for each deed of a time share interest recorded in the bureau of conveyances pursuant to chapter 502, Hawaii Revised Statutes.

We understand that the bill is still a work in progress, but would ask that the Committee move the bill forward for the purposes of continued discussion to work on the issues the measure is intended to address.

Wyndham appreciates the opportunity to submit comments on this matter and supports the passage of S.B. 2632, SD1.

McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

CHARLES E. PEAR, JR.

DIRECT #:
PHONE - (808) 223-1212
FAX - (808) 535-8029
E-MAIL - PEAR@M4LAW.COM

March 9, 2012

Via email and facsimile

Rep. Tom Brower, Chair
Rep. James Kunane Tokioka, Vice Chair
Members of the Committee on
Tourism
Twenty-Sixth Legislature
Regular Session, 2012

Rep. Karen L. Awana, Chair
Rep. Mark J. Hashem, Vice Chair
Members of the Committee on
International Affairs
Twenty-Sixth Legislature
Regular Session, 2012

Re: S.B. 2632, S.D.1
Hearing on March 12, 2012, 9:30 a.m.
Conference Room 312

Dear Chair, Vice-Chair and Members of the Committee:

My name is Charles Pear. I represent SVO Pacific, Inc., a Florida corporation. It is a wholly owned subsidiary of Starwood Vacation Ownership, the time share arm of Starwood Hotels and Resorts Worldwide, Inc. It is the developer of various Westin and Sheraton time share plans, including the Westin Ka'anapali Ocean Resort Villas (on Maui), the Westin Ka'anapali Ocean Resort Villas North (also on Maui) and the Westin Princeville Ocean Resort Villas (on Kauai).

SVO Pacific, Inc. supports the bill.

The Hawai'i Land Court Act was adopted in 1903. It provided a means to establish clear title to a parcel of land through a court proceeding. Essentially, the court determined the lawful owner of a parcel of real estate, and then issued a certificate of title to that owner. From then on, no encumbrance would affect the title unless it was filed in the Land Court and noted on the certificate of title. Likewise, a deed was not effective to convey title unless it was filed in the Land Court. Upon filing a deed, the Land Court would cancel the old certificate of title and issue a new one to the new owner.

The Land Court system served its intended purpose very well. At the time that the law was adopted, however, there were no condominiums and no time share projects.

The introduction of condominium projects posed certain new issues for the Land Court. In time, a workable system for dealing with Land Court condominiums developed. That system involved bending some of the statutory requirements, and problems continued to surface from time to time.

P. O. Box 2800 • Honolulu, Hawai'i 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawai'i 96813
Telephone: (808) 529-7300 • Fax: (808) 524-8293 • E-mail: info@m4law.com

For example, Section 514A-11 of the Condominium Property Act required that the Bureau of Conveyances establish recording procedures for condominium projects. It provided, and still provides, that "land court certificates of title shall not be issued for apartments."

Despite this, the Land Court has issued separate certificates of title for fee simple condominium apartments.¹ The Land Court probably found it impractical to do otherwise. If a single certificate of title covered all units in, say, a 200 unit condominium, then each owner's interest would have to be noted on a single certificate of title. Each mortgage of an apartment would also have to be noted on the same certificate of title.

The Land Court's practice of issuing individual certificates of title to each unit owner was a practical, if not entirely authorized response to the problem. It has worked effectively for fee simple condominiums.

In the case of leasehold condominiums, however, a single certificate of title still is issued to the lessor for the entire project. The interest of individual apartment lessees is noted on the certificate of title. No doubt this has proven to be a cumbersome process.

In the 1970's, time sharing showed up on the scene. Some of these time share plans were established in leasehold condominiums. A time share plan may divide the ownership of an individual condominium apartment among 50 or more owners. The result was that the certificate of title for a 200 unit leasehold condominium would now reflect not 200 lessees, but perhaps 10,000 lessees.

After struggling with this for nearly two decades, the Land Court initiated a legislative solution. On behalf of the Land Court, I prepared a bill that provided that all conveyances of leasehold time share interests would be recorded in the "regular system", and that such conveyances would not be noted on the certificate of title. That bill was adopted as Act 219, S.L.H. 1998, and took effect in 1999.

At that point, similar concerns were arising with respect to fee simple time share projects. For example, at about that time, construction began on a time share project, consisting of perhaps 750 units. It is not a condominium. Instead, as I understand it, each purchaser receives an undivided interest in the whole project. If so, there may be perhaps as many as 50,000 co-owners of the land.

¹ Technically, the Land Court issued separate certificates of title for the undivided interest appurtenant to each condominium unit, instead of issuing the certificate of title for the unit itself. The practical effect is that separate certificates were issued with respect to each unit.

The Land Court Act provides that when property is owned by two or more co-owners, a single certificate of title will be issued showing the interest of all co-owners.² Upon a conveyance, the Land Court must cancel the existing certificate of title and issue a new one showing the interest of each owner.³

In the project described above, sales are taking place daily. In this context, the existing law might literally require that the Land Court cancel and issue new certificates of title daily.

Following its practical bent toward solving such problems, the Land Court simply began issuing individual certificates of title for each time share interest. Despite this effort, however, various problems remained.

For example, when the declaration for a time share plan is amended, the amendment must be noted on each certificate of title. The Land Court requires that it be provided a list showing all owners and their certificate of title number. In the case of one project, this required a title search for the records of some 12,000 owners. This was a costly and time-consuming process. Moreover, by the time that such a search is completed, additional sales and resales have taken place such that the list is no longer accurate.

In 2002 and 2003, I prepared various drafts of legislation that would effectively withdraw fee simple time share interests from the operation of the Land Court Act. I worked with a team of individuals from associated with the Land Court or the title industry. In 2009, a variation of that legislation passed and was enacted as Act 120, 2009 S.L.H. The Act took effect on July 1, 2011.

Act 120 was patterned on legislation adopted in certain other states that terminated their equivalent of the Land Court. It provides that, upon presentation of a deed or any other instrument affecting a fee time share interest, the assistant registrar of the Land Court will not file the same in the Land Court. Instead, it provides that the assistant registrar of the Land Court must:

1. Update the certificate of title for all fee time share interests in the time share plan;
2. Record *in the regular system* the updated certificate of title for each fee time share interest in the time share plan;
3. Record *in the regular system* the deed or *other* instrument; and

² Section 501-84 provides: Where two or more persons are registered owners under any tenancy, one certificate shall be issued for the whole land. Any conveyance of fee simple interest in registered land shall be recorded with the assistant registrar, who shall note the same on the certificate, cancel all the certificates affecting the whole land, and issue a new certificate to reflect all the owners of the whole land.

³ See the second sentence in the preceding footnote.

4. Cancel the certificate of title for *each* fee time share interest in the time share plan.

Upon recordation of the certificate of title for a fee time share interest, that time share interest is no longer subject to chapter 501, HRS (the Land Court Act). From then on, all deeds and other instruments affecting the fee time share interest must be recorded in the regular system instead of in the Land Court. This process is referred to as “deregistration” of the time share interests.

At the time when Act 120 was drafted, I believe that the Land Court was approximately nine months behind in issuing certificates of title. By that, I mean that if a deed was recorded in the Land Court on January 1, the certificate of title would not be finalized until about September 1. While this may seem like an extended period, in fact the Land Court had previously suffered considerably longer delays and it appeared at the time that the Land Court was well on its way to catching up.

As we all know, however, a historic boom in the real estate industry occurred in the middle of the decade. By the time that Act 120 passed in 2009, the delay between recording a deed and issuing a certificate of title was now approximately three years. Moreover, timesharing had enjoyed a concurrent boom with the result that large numbers of deeds of fee time share interests were recorded between 2002 and 2009.

In short, when Act 120 took effect in July, 2011, the Land Court staff was faced with the virtually impossible task of updating the certificates of title for huge numbers fee time share interests – possibly in excess of 100,000 – within a period of just a few days after the effective date of that Act. Since Act 120 calls for deregistration of all time share interests in a time share plan upon presentation of a deed or other instrument affecting any of them, the Land Court was simply unable to implement the legislation as written.

This bill is intended to alleviate the problem currently faced by the Land Court. It does so by simply declaring that all fee time share interests are no longer subject to the Land Court Act. This occurs automatically for all fee time share interests and does not require that the Land Court update the certificates of title *prior to* deregistration. Instead, the Land Court will update the certificates of title as and when it can. However, the fee time share interests will be deregistered as of July 1, 2012 regardless of the date when the certificates of title are updated. This is intended to alleviate the immediate pressure to update the certificates of title on the assistant registrar of the Land Court while also preserving the integrity of the Land Court system.

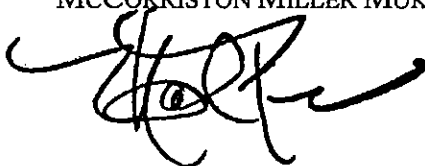
* * *

Chair, Vice-Chair and Members, House
Committees on Tourism and International Affairs
March 9, 2012
Page 5

Please do not hesitate to contact us should you have any questions regarding the foregoing or wish to discuss in detail any of the above.

Very Truly Yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

A handwritten signature in black ink, appearing to read 'CEP', with a stylized flourish extending to the right.

Charles E. Pear, Jr.

CEP:kn



Title Guaranty of Hawaii, Inc.

235 QUEEN STREET, HONOLULU, HI 96813 • P.O. Box 3084, HONOLULU, HI 96806
LEGAL DEPARTMENT TEL: (808) 533-5842 • FAX: (808) 521-0287

March 11, 2012

The Honorable Tom Brower, Chair
The Honorable James Kunane Tokioka, Vice Chair
Members of the House Committee on Tourism
State Capitol, Conference Room 312
Honolulu, Hawaii 96813

Re: Senate Bill 2632, SD1 Relating To Fee Time Share Interests
Hearing Date: March 12, 2012
Hearing Time: 9:30 a.m.

Dear Chair Brower, Vice Chair Tokioka, and Members of the House Committee on Tourism:

Thank you for the opportunity to express our position on Senate Bill 2632, SD1. I am Lorrin Hirano, Sr. Vice President and Legal Counsel for Title Guaranty of Hawaii, Inc.

As a company that works daily with the Bureau of Conveyances, we support the intent of this Bill. In the long run, the elimination of the need to maintain transfer certificates of title for each of the tens, if not hundreds of thousands of individual Land Court timeshare intervals will save processing time in the future for the Bureau.

I have been involved in substantive discussions to amend the current draft of the Bill. It is our position that the Bill, as drafted, needs further amendments to clarify the practical process for deregistering the timeshare interests in order to make sure that the integrity of the owner's title is protected as it transitions from registered to deregistered status. The group of us that has been meeting are working diligently towards this end, and we respectfully request that your Committees allow the Bill to advance for discussion purposes.

Thank you again for your consideration and for the opportunity to testify on this measure.

Respectfully submitted,

Lorrin Hirano